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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

8
9 MICHAEL PATTON,

Case No. 1:20-cv-01498-DAD-SKO

10 Plaintiff,

**ORDER MODIFYING SCHEDULING
ORDER**

11 v.

(Doc. 28)

12
13 ESA P PORTFOLIO, L.L.C., and
ESA MANAGEMENT, LLC,

14 Defendants.
15 _____/

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17 On October 8, 2021, Defendants filed a motion to modify the scheduling order and sought
18 an order shortening the time to hear the motion. (Docs. 27, 28.) By order entered October 13, 2021,
19 the Court granted Defendants' request to shorten time and set an expedited briefing schedule for the
20 motion. (Doc. 29.) In that order, the Court observed that

21 Plaintiff's motion for leave to amend the complaint was filed on October 4, 2021,
22 after the June 1, 2021 deadline for requesting leave to amend the pleadings. (*See*
23 Doc. 18 at 2; Doc. 25.) Both Plaintiff's motion for leave to amend the complaint
24 and Defendants' motion to modify the scheduling order seek permission to take
25 particular actions after the expiration of relevant deadlines. As it appears that
26 modification of the scheduling order could be beneficial to both parties (and
27 necessary in the event Plaintiff's motion is granted), the parties are ***highly***
28 ***encouraged*** to meet and confer in order to agree upon a joint proposal for
modification of the scheduling order and to avoid further burdening the Court
(which carries one of the heaviest caseloads in the nation)

1 (Doc. 29 n.1 (emphasis in original).) Instead of reaching an agreement on an enlargement, Plaintiff
2 filed an opposition to Defendants’ motion. (*See* Doc. 30.) Defendants filed their reply on October
3 22, 2021. (Doc. 32.)

4 Defendants’ position is that the now-expired fact and expert discovery deadlines should be
5 extended by approximately six to eight months from the date of expiration due to Plaintiff’s recent
6 supplemental disclosures and request to amend his complaint, both made after the close of fact
7 discovery, and delays caused by COVID-19. (*See* Doc. 28-1 at 2, 4–5; Doc. 32 at 4–6.) No other
8 enlargements to the schedule are sought. (*See* Doc. 28 at 2.)

9 Plaintiff counters that there is no good cause to modify the scheduling order because
10 Defendants have not been diligent in litigating this case, as evidenced by their “complete inactivity
11 to conduct discovery” and failure to designate timely rebuttal experts. (Doc. 30-at 8, 15.)

12 Despite Plaintiff’s protestations against modifying the scheduling order (and Defendants’
13 reasons therefor), the fact remains that Plaintiff filed his pending motion to amend the complaint on
14 October 4, 2021—over four months after the deadline had expired, *see* Doc. 18 at 2. A motion to
15 amend that is filed after the amendment deadline necessarily requires modification of the case
16 schedule. *See Ocean Garden Prod. Inc. v. Blessings Inc.*, No. CV-18-00322-TUC-RM, 2020 WL
17 3579164, at *2 (D. Ariz. June 30, 2020) (“In cases in which a scheduling order’s deadline for
18 amending pleadings has expired by the time a motion to amend is filed, the motion is properly
19 examined first under Federal Rule of Civil Procedure 16(b)(4) as a motion to modify the scheduling
20 order.”) (citing *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000)). Moreover,
21 according to Plaintiff, the proposed amended complaint seeks to allege ADA violations that were
22 discovered following an inspection of the hotel room at issue and thereafter incorporated in
23 Plaintiff’s expert reports.¹ (*See* Doc. 25 at 2.) If Plaintiff’s motion to amend, which is unopposed
24 (*see* Doc. 31), is granted, Defendants would be entitled to conduct fact discovery regarding those
25

26
27 ¹ The inspection took place on July 12, 2021, after the amendment deadline . The Court notes that this is not the first
28 time the parties have agreed to actions beyond the deadlines set forth in the scheduling order. (*See, e.g.*, Doc. 30-1 at 7.) The Court observes that had the parties memorialized their agreement(s) in the form of a stipulated amended scheduling order, instead of proceeding ad hoc, they might have avoided the current dispute altogether.

1 ADA violations and to rebut Plaintiff's expert reports.² In addition, the existing motion deadlines
 2 are rapidly approaching and may expire prior to the presiding district judge ruling on Plaintiff's
 3 motion to amend. Finally, Defendants should be permitted to conduct discovery regarding
 4 Plaintiff's recently-served supplemental disclosures, which include 316 pages of additional
 5 treatment records. (*See* Doc. 30-1 at 10.)

6 Under these circumstances, the Court agrees that a modification of the scheduling order is
 7 warranted, *see* Fed. R. Civ. P. 16(b)(4), and Defendants' motion is GRANTED insofar as it seeks
 8 that relief. The motion, however, is DENIED with respect to the length of the enlargement
 9 requested, as the undersigned finds it excessive under the circumstances.³ Considering each party's
 10 position and the posture of this case, the Court finds that approximately **four (4) months** from the
 11 time of expiration is a reasonable extension of the discovery deadlines at issue. Such extension will
 12 accommodate ***both*** parties' need to complete fact and expert depositions (*see* Doc. 30-1 at 4, 7), and
 13 it will also allow for Defendants to designate a rebuttal expert(s) based on information pleaded in
 14 Plaintiff's amended complaint, if granted, and to conduct discovery on Plaintiff's supplemental
 15 disclosures.⁴ More importantly, to the extent any disputes arise concerning this discovery, this
 16 enlargement also allows sufficient time for resolution of those disputes pursuant to the Court's
 17 informal discovery dispute process or Local Rule 251. (*See* Doc. 18 at 3 (requiring motions to
 18 compel to "be filed and heard sufficiently in advance of the discovery cutoff so that the Court may
 19 grant effective relief within the allotted discovery time."))

20 Finally, although Defendants did not request to extend the motion deadlines or the date of
 21 the pretrial conference, the Court, on its own motion, continues these dates to allow the Court time

22 ² Plaintiff criticizes Defendants' apparent failure to designate a rebuttal expert (*see* Doc. 30-1 at 5), but to do so would
 23 have been premature in view of Plaintiff's proposed amendments to his complaint, which were first disclosed September
 24 9, 2021. (*See* Doc. 30-2 ¶ 16.).

25 ³ While the undersigned is sympathetic to discovery delays caused by the global COVID-19 pandemic, it doesn't appear
 26 that, other than noticing Plaintiff's deposition, Defendants made any attempt to pursue discovery from Plaintiff in this
 27 case during the six-month designated discovery period. (*See* Doc. 30-1 at 6–7.)

28 ⁴ The undersigned takes no position on the merits of Plaintiff's motion for leave to amend the complaint, as such motion
 is before the assigned district judge. Should it appear to the parties that the ruling on the motion will postdate the
 modified case deadlines, a further modification to the scheduling order may be appropriate. If so, the parties SHALL
 meet and confer meet and confer in a good faith effort to agree upon a modification without court action (*i.e.*, by
 stipulation). This requires, in addition to any written correspondence the parties may engage in (letters and/or email),
 that the parties speak with each other about the dispute, which may be accomplished in person, over the telephone, or
 through videoconferencing.

to rule on motions in advance of the pretrial conference.

Accordingly, the scheduling order (Doc. 18) is MODIFIED as follows:

Matter	Current Date	Continued Date
Non-Expert Discovery	August 2, 2021	December 2, 2021
Expert Disclosures	September 1, 2021	January 3, 2022
Rebuttal Expert Witnesses Disclosure	September 17, 2021	January 18, 2022
Expert Witness Discovery	October 1, 2021	February 1, 2022
Non-Dispositive Motion Filing Deadline	November 1, 2021	March 1, 2022
Hearing for Non-Dispositive Motions	December 1, 2021	March 30, 2022
Dispositive Motion Filing Deadline	November 1, 2021	March 1, 2022
Pretrial Conference	April 4, 2022	August 8, 2022 at 2:30 p.m. ⁵

IT IS SO ORDERED.

Dated: October 25, 2021

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

⁵ As previously indicated, the Settlement Conference will be re-set upon receipt of the parties' proposed dates. (See Doc. 29 at 2.)